

# EXHIBIT A

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*Attorneys for Defendants United States of America,  
David Ballam, and Cynthia Sirk-Fear*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Trevor Reid, et al.,

Plaintiffs

v.

United States Department of Interior, et al.,

Defendants.

No. CV-22-00068-PHX-SMB

**NOTICE OF CERTIFICATION OF  
CONFERRAL**

Pursuant to the Court's Order (Doc. 7), and LRCiv 12.1(c), undersigned counsel states as follows:

1. Prior to filing The United States' Rule 12(b)(1) Partial Motion to Dismiss Claims Under the Federal Tort Claims Act; and *Bivens* Defendants Ballam's and Sirk-Fear's Motion to Dismiss Pursuant to Rule 12(b)(1)-(6) on October 11, 2022, undersigned counsel e-mailed (and mailed) Plaintiffs a letter outlining Defendants' positions in a forthcoming motion to dismiss that Plaintiffs' Complaint is subject to partial dismissal in certain respects, and complete dismissal in other respects, and inquiring if Plaintiffs were willing to voluntarily dismiss claims consistent with Defendants' positions. *See Attachment 1* hereto.

2. On October 7, 2022, Plaintiffs emailed undersigned counsel a responsive letter. *See Attachment 2* hereto.

1           3.       Undersigned counsel and Plaintiffs conferred and were unable to agree that  
2 the Complaint will be cured consistent with Defendants' positions.

3  
4           RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of October, 2022.

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6                               GARY M. RESTAINO  
7                               United States Attorney  
8                               District of Arizona

9                               s/Noel C. Capps  
10                              NOEL C. CAPPS  
11                              Assistant United States Attorney  
12                              Attorneys for Defendants United States of  
13                              America, David Ballam, and Cynthia  
14                              Sirk-Fear  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 11, 2022, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant(s):

**Trevor Reid**  
**Crystale Reason**  
3920 E. Thomas Rd. # 5723  
Phoenix, AZ 85010  
PRO SE

s/ Celescia Broughton  
U.S. Attorney's Office

# ATTACHMENT 1



U.S. Department of Justice

GARY M. RESTAINO  
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District of Arizona

Two Renaissance Square  
40 N. Central Ave., Suite 1800  
Phoenix, AZ 85004-4449

Main: (602) 514-7500  
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October 6, 2022

**Sent Via E-mail to: [trevor.d.reid@gmail.com](mailto:trevor.d.reid@gmail.com); [crystale.reid@gmail.com](mailto:crystale.reid@gmail.com)**

**Sent Via U.S. Mail to: Trevor Reid and Crystale Reid**

**3920 E. Thomas Road, #5723**

**Phoenix, Arizona**

**85010 ■**

■

Re: *Trever Reid, et al., v. U.S. Department of Interior, et al.*  
Dist. of Arizona Court No.: CV-22-00068-PHX-SMB

Dear Mr. Reid and Mrs. Reid:

In light of the Court's January 18, 2022 Order (Doc. 7), and Local Rule 12.1(c), I am writing regarding deficiencies in your Complaint that will form the basis of my filing a Motion to Dismiss based on Fed. R. Civ. P. 12(b)(1)-(6). This constitutes my effort to confer with you as required by the rules. I represent defendants the United States of America, David Ballam, in his individual capacity, and Cynthia Sirk-Fear, in her individual capacity. Defendant Justin Doyle is deceased, as previously communicated.

The claims asserted under the Federal Tort Claims Act ("FTCA") against defendants U.S. Department of the Interior, the National Park Service, the three individual National Park Service Rangers (Doyle, Ballam, and Sirk-Fear), and Doe defendants are subject to dismissal for lack of subject matter jurisdiction. The FTCA claims can only be asserted against the United States, which previously substituted into this matter. The Court also lacks subject matter jurisdiction over any FTCA claim that was not administratively exhausted prior to the filing of your lawsuit. The Court further lacks personal jurisdiction over David Ballam and Cynthia Sirk-Fear, neither of whom were properly served, and even had proper service been effectuated on them, lack sufficient contacts with Arizona to allow the Court to exercise personal jurisdiction over them. No claim properly lies against Mr. Ballam or Ms. Sirk-Fear in their official capacity. The *Bivens* claims are further subject to dismissal because they are untimely and fail to state a claim for which relief can be granted. No *Bivens* claim lies against Ms. Sirk-Fear because she had no personal involvement in the subject encounter. Venue for the *Bivens* claims is also not proper in Arizona federal district court. Finally, no constitutional tort claim can be asserted against the United States because it has not waived sovereign immunity to be sued for the claims asserted.

In light of these deficiencies, it does not appear that your Complaint can be amended in a way that can avoid dismissal of claims other than FTCA claims against the United States only and which were previously administratively exhausted. Please note that as to any remaining FTCA claims, there is no right

to the jury trial, punitive damages, or the declaratory and injunctive relief demanded in the Complaint. Kindly advise if you are willing to voluntarily dismiss these claims, dismiss Mr. Ballam and Ms. Sirk-Fear, and dismiss the *Bivens* and alleged constitutional violations claims.

Sincerely,

GARY M. RESTAINO  
United States Attorney  
District of Arizona

s/ Noel C. Capps  
NOEL C. CAPPS  
Assistant United States Attorney  
*Attorneys for Defendants*

# ATTACHMENT 2



October 7th, 2022

Trevor Reid  
Crystale Reason  
3920 E. Thomas Road #5723  
Phoenix, Arizona 85010

Noel Capps  
Two Renaissance Square  
40 N. Central Ave., Suite 1800  
Phoenix, AZ 85004-4449  
(via mail and email to: Noel.Capps@usdoj.gov)

RE: **Reid, et al., v. U.S. Department of Interior, et al.**  
**Dist. of Arizona Court No.: CV-22-00068-PHX-SMB**

Dear Mr. Capps:

This is in response to your correspondence dated October 6, 2022.

Concerning claims under the Federal Tort Claims Act (FTCA) we do not oppose the substitution of the United States (USA) as defendant for U.S. Department of the Interior, the National Park Service, the three National Park Service Rangers (Doyle, Ballam, and Sirk-Fear) in their official capacities, and the Doe defendants.

As you have noted, substitution has already been made for the rangers. Upon substitution for the others above we are willing to voluntarily dismiss those parties.

Regarding the defendant rangers David Ballam and Cynthia Sirk-Fear in their individual capacities, our position is that these individual parties were voluntarily dismissed from this action without prejudice and remain so. The court does not have discretion to ignore plaintiffs' Notice of Voluntary of Dismissal (Doc. 18). *Com. Space Mgmt. Co. v. Boeing Co.*, 193 F.3d 1074, 1078 (9th Cir. 1999).

As the dismissal of Mr. Ballam and Ms. Sirk-Fear was without prejudice, there is the potential to rejoin them to this action by amendment of the complaint. In that event, we would likely request such claims be transferred to the federal district court(s) where they work or reside. There is also the possibility of complaining against these two rangers directly in their local courts.

That said, please convey to your clients, Mr. Ballam and Ms. Sirk-Fear, that we are inclined to voluntarily dismiss with prejudice all our claims as to each, as well as to

release each from any liability connected to this affair, upon written assurance of his/her full cooperation as a witness in this matter.

We will oppose any motion to dismiss them as they are not presently parties to this action. They are not before the court to be dismissed. We'd be pleased to jointly clarify for the court that these two individual defendants have already been dismissed without prejudice.

Turning to the deficiencies that you suggested regarding *Bivens* and non-FTCA tort claims, we are prepared to dismiss those as to the USA and the defendants for which it has been substituted. We will proceed against the USA on the balance of the administratively exhausted FTCA claims, subject also to our right to amend the complaint under Fed. R. Civ. P. 15.

Sincere regards,

/s/ Trevor Reid

/s/ Crystale Reason